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August 2, 2010

The Honorable Christine A. Varney
Assistant Attorney General, Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Assistant Attorney General Varney:

I write regarding the Justice Department's review of the proposed combination of two of our nation's largest media and entertainment companies – Comcast and NBC Universal.

The key to evaluating any merger or joint venture is to ask how it will affect competition and whether it will lessen competition, based on the specific facts of the business combination. Some combinations may benefit competition by enabling the deployment of new and better products and services. Others may harm competition by limiting the choices available to consumers.

With the acquisition of NBC Universal, Comcast will be the largest media company in the nation. It is currently the largest provider of broadband last-mile services and the largest provider of multichannel video distribution services. As further detailed below, I have some concerns about the potential for harm to competition and consumers, particularly with respect to the continued availability of a wide array of video programming content to all Americans, regardless of whether they subscribe to the combined company's various services.

After reviewing the matter, I urge the Department to approve the Comcast-NBC Universal combination and to consider and address the following concerns I have in order to mitigate the potential for harm to competition and consumers. I also urge that the Department approve the proposed combination by December 1, 2010.

1. Programs that are delivered over the air by NBC today and are later made available on the nbc.com Web site for free online viewing should not be permitted to migrate exclusively to TV Everywhere or exclusively to any other online program platform or platforms.

2. Vertically-integrated cable operators are prohibited under current law from entering into exclusive contracts for the provision of satellite-delivered video programming in which the vertically-integrated cable operator has an attributable interest, unless the Commission determines that the contract is in the public interest. Correspondingly, the combined company should not be permitted to enter into exclusive contracts that restrict the availability of online video programming content to TV Everywhere or any other online platform when the company has an attributable interest in that content.
3. As an analog to concerns about the company's treatment of affiliated video programming, the combined company also should not be permitted to keep its competitors from offering video programming content that is not affiliated with Comcast. Specifically, the combined company should not be allowed to enter into exclusive agreements, nor enforce any existing exclusive agreements, regarding content in which it does not have an attributable interest that is available on TV Everywhere or any other online platform. This prohibition should apply when an exclusive agreement could potentially restrict the availability of the unaffiliated programming on the platforms of other multichannel video programming distributors or on other online platforms.
4. If Comcast, or an entity controlled by or under common control with Comcast, acquires the distribution rights for any high value sporting events, including NFL, NBA, MLB, NHL and NCAA games and PGA golf events, that were, immediately prior to Comcast's acquisition of such rights, distributed via over-the-air broadcasting, the combined company should not distribute such programming exclusively on its pay cable networks or diminish the over-the-air distribution of such high value sporting events to such an extent as to effectively deprive the public of free access to such events. I understand that Comcast, NBC Universal and the NBC affiliates have reached an agreement regarding sports programming, and I request that the Commission incorporate that agreement into its final order.
5. In response to the concern that at one time, the users of Boxee technology were not able to access content distributed by Hulu, the combined company should not prevent any Internet-enabled device from displaying any online programming service in which the combined company has an attributable interest or an agreement, provided that such display does not compromise the functionality, appearance and intellectual property rights of the online programming service.

As of the date of this letter, discussions focused on the potential for passing legislation to assure Internet openness are underway. If those discussions are successful, Congress will soon take up legislation that will apply a uniform set of network openness principles to all broadband providers. I strongly believe that these principles, once adopted, should have universal application to all broadband providers and that it would be highly inappropriate to impose network openness requirements on a single broadband provider prior to the time that rules are applicable across the industry. Accordingly, I urge that the Department not impose any conditions on its approval of the Comcast-NBC Universal combination regarding network

openness. That consideration is best left to the multiparty negotiations, legislation and Federal Communications Commission proceedings of general applicability.

I appreciate your consideration of these concerns. Addressing them will help ensure that the synergies that the transaction promises confer benefits on competition and consumers while mitigating the potential for consumer harm.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Rick Boucher". The signature is written in a cursive style with a large, stylized "R" and "B".

Rick Boucher
Member of Congress